



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NO PROTEST RECEIVED
Release to Manager, EO Determinations - Cincinnati

Date: [REDACTED]

Contact Person: [REDACTED]

ID Number: [REDACTED]

Telephone Number: [REDACTED]

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated on [REDACTED], in the State of [REDACTED]. As stated in your Articles, you are organized exclusively for the purpose of "receiving and administering funds for the purposes described below and for the purposes of benefiting the community of Detroit, Michigan and surrounding areas throughout the United States by promoting community education, lessening the burdens of government, promoting conservation and environmental protection, combating community deterioration, promoting community beautification and preservations and the erection or maintenance of public buildings, monuments or works and other charitable related activities within the meaning of section 501(c)(3) of the Code."

[REDACTED], who is also your president, established you. Your purpose is to encourage [REDACTED] through worship concerts, seminars and preaching/teaching opportunities. [REDACTED] and his family conduct your concerts. As stated in your website, by "using a variety of musical styles and instruments, we bring powerful Biblical truths into our original music to encourage, challenge and entertain. Years of professional music experience blended with the freshness of youth give our family band a strong appeal to both parents and kids." You distribute religious materials, such as tapes and CDs at your concerts, seminars, etc. You solicit a contribution for these materials.

You pay the production expenses to produce the religious CDs, however, [REDACTED] owns all copyrights to the CDs. You also pay the expenses for video studio equipment and computer hardware, however you do not own these items. The musician owns such items. You also defray the traveling expenses of the [REDACTED] family concerts.

You received start-up loans from [REDACTED] and [REDACTED], Secretary and Treasurer. [REDACTED] loaned you \$[REDACTED], \$[REDACTED] and \$[REDACTED] for years [REDACTED].

and [REDACTED] respectively. [REDACTED] loaned you \$[REDACTED], \$[REDACTED] and \$[REDACTED] for years [REDACTED], [REDACTED] and [REDACTED] respectively. You anticipate full support being derived from contributions in the future.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations that are organized and operated exclusively for charitable, educational or scientific purposes, no part of the net earnings of which inures to the benefit of private shareholders or individuals.

Section 1.501(a)-1 of the Income Tax Regulations provides that the words 'private shareholder or individual' in section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(3) of the regulations defines the term "educational" as including the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words 'private shareholder or individual', see paragraph (c) of Sec. 1.501(a)-1.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 67-5, 1967-1 C.B. 123, concerned a foundation controlled by its creator's family and operated to enable the creator and his family to engage in financial activities which are beneficial to them, but detrimental to the foundation. The Service concluded that the foundation was operated for a substantial non-exempt purpose and served the private interests of the creator and his family. The ruling reasoned as follows:

The use of the foundation as a vehicle for activities advantageous to its creator and his family and as a source of funds to finance such activities, the resulting investments by the foundation in assets that fail to produce income for a charitable program commensurate in scope with its financial resources, the continued failure of its trustees to protect the value of these investments, and their failure to make them income-producing, all establish that the foundation is operated for a non-exempt purpose; substantial in nature. That purpose is to serve the private financial interests of its creator and his family Furthermore, the foundation fails to serve a public, rather than a private, interest and therefore is not operated exclusively for charitable purposes.

In International Postgraduate Medical Foundation, T.C. Memo-1989-36, the court held that the Service had properly revoked the 501(c)(3) status of an organization that did not operate exclusively for exempt purposes. The court based its conclusion, in part, on the fact that a related for-profit corporation had benefited substantially from the manner in which the activities of the exempt organization were conducted. In these circumstances, the court said, an organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code, even though it furthers other exempt purposes.

In this case, the organization had the substantial non-exempt purpose of benefiting a for-profit travel agency controlled by parties related to the organization. The organization had been formed and was controlled by an individual who had previously operated all tour operations through a for-profit entity. The travel agency received substantial fees from customers attending tours promoted by the organization, under a non-competitive arrangement.

In Church by Mail, Inc. v. Commissioner, 765 F.2d 1387 (9th Cir. 1985), affg T.C.M. 84-349, the court upheld denial of 501(c)(3) status to an organization because it was operated for the non-exempt purpose of providing a market for the services of a for-profit fund-raising firm owned by parties related to the organization. Key facts considered by the court included that employees of the for-profit firm devoted two-thirds of their time to the organization's business; that the majority of the organization's income went to payments to the for-profit firm; and that the controlling parties profited from the relationship.

In Better Business Bureau v. United States, 326 U.S. 279, 283 (1945) the U.S. Supreme Court stated in a case involving a claim for exemption on exclusively educational grounds:

In order to fall within the claimed exemption an organization must be devoted to educational purposes exclusively. This plainly means that the presence of a single noneducational purpose, if substantial in nature, will destroy an organization's exemption regardless of the number or importance of truly educational purposes.

In Christian Manner International, Inc. v. Commissioner, 71 T.C. 62 (1979) the court held that where the taxpayer's articles of incorporation indicated that its primary purposes were religious, charitable and educational in nature, but its primary activity was the publication and sale of books written by the its founder at a profit, the organization does not qualify for

[REDACTED]

exemption under section 501(c)(3) of the Code.

People of God Community v. Commissioner, 75 T.C. 127 (1980), the organization paid its minister, also a director who controls the organization, with a compensation based on a percentage of the organization's gross receipts. The court found that with such compensation arrangement, a portion of the organization's earnings is being passed to the minister, and paying over a portion of gross earnings to those vested with control of an organization constitutes private inurement. Accordingly, the court held that the organization is not exempt under section 501(c)(3) of the Code.

You are not organized and operated exclusively for religious or charitable purposes described in section 501(c)(3) of the Code. The use of your income to pay [REDACTED] production costs, travel expenses, and computer and video studio equipment owned by him serves his private interests rather than public interests. The concerts promote [REDACTED] music and enhance the value of his work. [REDACTED] retains all rights of ownership and control and, thus, receives substantial benefits from the promotion of the CDs pursuant to section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Although you were formed to handle all details related to the concerts, [REDACTED] maintains ownership and control over the use of the assets. Under the circumstances, your income inures to the benefit of [REDACTED] who has received a substantial portion of your gross receipts through the payment of his travel expenses, CD production and equipment expenses pursuant to section 1.501(c)(3)-1(c)(2) of the regulations. People of God Community v. Commissioner, supra; International Postgraduate Medical Foundation, supra; Church by Mail, Inc. v. Commissioner, supra. Further, your operations and programs are not devoted to exclusively religious or charitable purposes within the meaning of section 501(c)(3) of the Code. See, Better Business Bureau v. United States, supra.

The private benefit received by [REDACTED] by the production of your concerts is more than insubstantial in nature. You defray all expenses, while [REDACTED] retains ownership and control of the assets. You are promoting his CDs by attracting the public to listen to his music and, thus, you are serving his private interests to a substantial degree. In this respect, you do not meet the requirements of section 501(c)(3)-1(d)(1)(ii) of the regulations because you are serving the private interests of your president, [REDACTED]. Further, this type of arrangement does not confer the kind of charitable benefit on the community that section 501(c)(3) requires. Thus, despite your stated religious and educational purposes, you are not operated exclusively for charitable purposes under section 501(c)(3) of the Code.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This

[REDACTED]

statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
[REDACTED]
[REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]
[REDACTED]
Manager, Exempt Organizations
[REDACTED]

[REDACTED]
[REDACTED]